



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
WU-16J

CERTIFIED MAIL NO. 7001 0320 0006 0180 6246
RETURN RECEIPT REQUESTED

Mosaic USA, LLC
30600 Telegraph Road
Bingham Farms, Michigan 48025

Re: Administrative Complaint for Violations of the Federal Safe Drinking Water Act filed
against Mosaic Potash Hersey, LLC
Docket No. **SDWA-05-2006-0005**

Dear Sir/Madam:

Enclosed please find an Administrative Complaint that has been filed against Mosaic Potash Hersey, LLC for violations of the applicable Underground Injection Control ("UIC") program for the State of Michigan, as promulgated pursuant to Section 1421 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §300h. These violations pertain to the United States Environmental Protection Agency Underground Injection Control Permit MI-133-3G-A002 (associated wells are 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082 located in Osceola County, Michigan).

The complaining party in this case (known as the "Complainant") is the Director of the Water Division at the United States Environmental Protection Agency ("U.S. EPA") Region 5 office in Chicago, Illinois. As the party named in the Administrative Complaint, Mosaic Potash Hersey, LLC is identified by the term "Respondent."

The Complainant filed this Complaint pursuant to Section 1423(c) of the SDWA, 42 U.S.C. §300h-2(c), which authorizes U.S. EPA to (1) issue compliance orders; and (2) assess civil penalties of up to \$5,000 for each day of violation, up to a maximum administrative penalty of \$125,000. For violations occurring after January 30, 1997, these statutory maximum civil penalties are increased by 10 percent (10%) pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. §2461, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"). A second inflation adjustment, pursuant to Title 40 of the Code of Federal Regulations (40 C.F.R.) Part 19, Adjustment of Civil Penalties of Inflation became effective March 15, 2004. This adjustment increased the maximum civil penalties by an additional 17.23 percent. For violations after March 15, 2004, penalties of up to \$11,000 per day up to a total of \$157,500 may be assessed.

This action will be resolved before a neutral U.S. EPA hearing officer, the Regional Judicial Officer ("RJO"), who is located at U.S. EPA's Region 5 office. The RJO is a U.S. EPA employee who has no personal interest in the case or knowledge of the case beyond the official administrative record of this proceeding. The procedures applicable to this case are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"), which are codified at 40 C.F.R. Part 22, Subpart I.

I highly recommend that the Respondent carefully read and analyze the enclosed copy of the

Consolidated Rules to determine the alternatives available to Respondent in responding to the alleged violations and the proposed civil penalty. Please note that each new day the violations cited herein continue constitutes a new and separate violation for which additional penalties may be imposed.

If Respondent chooses to request a hearing to contest the facts alleged in the Administrative Complaint, Respondent must request the hearing in its Answer, which Respondent must file with the Regional Hearing Clerk within the prescribed time limit of 30 days following service of this Administrative Complaint. 40 C.F.R. §22.15(a). A copy of the Answer and Request for Hearing (as well as copies of all other documents filed by Respondent in this proceeding) should be sent to:

John Tielsch
Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Tielsch's telephone number is (312) 353-7447.

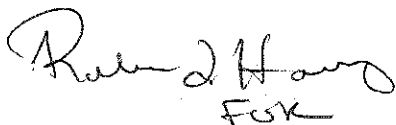
Failure to respond to this Administrative Complaint by specific Answer within 30 days of your receipt of this Administrative Complaint constitutes your admission of the allegations made in the Complaint, 40 C.F.R. § 22.15(d). Such failure may result in the issuance of a Default Order imposing the proposed civil penalties.

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to discuss the possibility of settlement. If Respondent has any questions about this matter or desires to request an informal conference for the purpose of settlement, please contact the attorney whose name, address and telephone number are provided above.

Respondent has the right to be represented by an attorney at any time during the process and at any informal settlement conference.

We urge your prompt attention to this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Jo-Lynn Traub", with a stylized flourish underneath.

Jo-Lynn Traub
Director, Water Division

Enclosures: Administrative Complaint
Consolidated Rules

cc: Mr. Robert Schweitzer (Mosaic Potash Hersey, LLC)
Peg McComb-Elowski Michigan Department of Environmental Quality
Regional Hearing Clerk (w/ original Complaint) U.S. EPA, Region 5 (E-19J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Mosaic USA, LLC, d/b/a
Mosaic Potash Hersey, LLC
Hersey, Michigan**

Respondent.

Docket No. SDWA-05-2006-0005

ADMINISTRATIVE COMPLAINT

I. COMPLAINT

GENERAL ALLEGATIONS

1. This is a civil administrative action instituted pursuant to Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c).
2. The procedures applicable to this case are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"), as codified at 40 Code of Federal Regulations (C.F.R.) Part 22. In particular, this proceeding shall be conducted in accordance with the procedures set forth in the Consolidated Rules at 40 C.F.R. Part 22, Subpart I, which apply to actions, such as this one, that are not governed by Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554.
3. The Director, Water Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), is, by lawful delegation, the Complainant.
4. The Respondent is Mosaic USA LLC (hereinafter "Respondent", which is, and has been continuously since at least February 13, 2002, a limited liability company organized under the laws of the State of Delaware and doing business in the State of

**RECEIVED
REGIONAL HEARING CLERK
US EPA REGION 5
2006 SEP 26 AM 10:34**

Michigan under the name Mosaic Potash Hersey LLC.

5. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that U.S. EPA promulgate regulations, which shall include inspection, monitoring, recordkeeping and reporting requirements, for State underground injection control ("UIC") programs that prevent the endangerment to drinking water sources by underground injection.
6. Section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt of U.S. EPA's approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primary enforcement responsibility of that program (a concept called "primacy").
7. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), further provides that, in states that have not obtained primacy, U.S. EPA is to promulgate, implement and enforce an applicable UIC program in that State.
8. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, U.S. EPA has promulgated UIC regulations at 40 C.F.R. Parts 144 through 147.
9. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.
10. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class III wells, as defined by 40 C.F.R. §§ 144.6, 146.5, consists of the UIC program requirements set forth at, *inter alia*, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.
11. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primacy over Class III wells, as defined by 40 C.F.R. §§ 144.6, 146.5, in the State of Michigan.
12. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the "applicable

- underground injection control program” as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.
13. Respondent owns and operates wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082.
 14. Wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082 are located at T 17N, R 9W and R 17W, Sections 26 and 27, Osceola County, Michigan.
 15. Wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082 are bored, drilled or driven shafts, or a dug holes, whose depths are greater than the largest surface dimension.
 16. The 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082 wells are “wells” as defined at 40 C.F.R. § 144.3.
 17. At times relevant to this Complaint, Respondent has performed, or has been authorized to perform, the subsurface emplacement of brine and fresh water into wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082.
 18. Brine and fresh water are materials or substances which flow or move in a semisolid, liquid, sludge, gas, or any other form or state.
 19. Brine and fresh water are “fluids” as defined at 40 C.F.R. § 144.3.
 20. The subsurface emplacement of brine and fresh water through wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082 is a “well injection” as defined at 40 C.F.R. § 144.3.
 21. Respondent’s “well injection” is an “underground injection” as defined by 40 C.F.R. § 144.3.
 22. Wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032,

2041, 2042, 2061, 2062, 2081, and 2082 are Class III wells as defined by 40 C.F.R. §§ 144.6 and 146.5.

23. On April 15, 1992, pursuant to the regulations at 40 C.F.R. Part 144, U.S. EPA issued to Kalium Chemicals, Ltd. Underground Injection Control Permit No. MI-133-3G-A002 ("the Permit"), which became effective upon May 15, 1992.
24. The Permit authorizes the underground injection of brine and fresh water into wells 1011, 1012, 1013, 1014, 1031, 1032, 1041, 1042, 1044, 1051, 2031, 2032, 2041, 2042, 2061, 2062, 2081, and 2082 subject to the terms and conditions set forth in the Permit.
25. Respondent is operating as the successor to Kalium Chemicals, Ltd. under the Permit, though no notice of transfer of the Permit has been sent to the Director.
26. Condition Part 1E.1. of the Permit and 40 C.F.R. § 144.51(a) require the Permittee to comply with the requirements of the Permit.
27. Section 1423(a) of SDWA, 42 U.S.C. § 300h-2(a), provides, *inter alia*, that U.S. EPA may issue an order under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), to any person found to be in violation of any regulation or requirement of an applicable UIC program in a State that does not have primacy.
28. Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), provides that U.S. EPA may issue to any person in violation of any regulation or requirement not relating to the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or any underground injection for the secondary or tertiary recovery of oil or natural gas, an administrative order assessing a civil penalty of not more than \$10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$125,000, or requiring compliance with such regulation or requirement, or both. For violations occurring

after January 30, 1997, these statutory maximum civil penalties are increased by 10 percent (10%) pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"). A second inflation adjustment, pursuant to 40 C.F.R. Part 19, Adjustment of Civil Penalties of Inflation, became effective March 15, 2004. This adjustment increased the maximum civil penalties by an additional 17.23 percent. For violations after March 15, 2004 penalties of up to \$6,500 per day up to a total of \$157,500 may be assessed.

COUNT I

Failure to Demonstrate Mechanical Integrity

29. The General Allegations of this Administrative Complaint are incorporated by reference as if fully set forth herein.
30. Part I E 19 of the Permit requires that the permittee demonstrate Part II of the Mechanical Integrity demonstration for each well every 60 months from the date of the last approved demonstration.
31. Respondent failed to demonstrate Part II Mechanical Integrity within 60 months from the date of the last approved demonstration on the following 18 wells:

Well Name	Last Approved Demonstration
1011	None
1012	None
1013	None
1014	None
1031	None
1032	10/14/1996
1041	None
1042	3/4/1994
1044	None
1051	None
2031	None
2032	10/14/1996
2041	11/30/2000
2042	11/30/2000
2061	None
2062	10/14/1996

2081
2082

5/13/1998
5/13/1998

32. Each of Respondent's failures to demonstrate Mechanical Integrity constitutes a violation of Conditions Part I E 19 and Part I E 1 of the Permit and 40 C.F.R. § 144.51(a).
33. Each of Respondent's violations of Conditions Part I (E) (19) of the Permit and 40 C.F.R. § 144.51(a) subjects Respondent to the issuance of an administrative order pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c) (1).

II

PROPOSED CIVIL PENALTY

Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing any civil penalty, U.S. EPA shall take into account (i) the seriousness of the violation, (ii) the economic benefit (if any) resulting from the violation, (iii) any history of such violations, (iv) any good faith efforts to comply with the applicable requirements, (v) the economic impact of the penalty on the violator, and (vi) such other matters as justice may require.

Based upon the factors set forth at Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), Complainant proposes that Respondent be assessed a civil penalty of ONE HUNDRED FIFTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$157,500.00) for the violations alleged in this Complaint. Complainant derived the penalty proposed in this Complaint by applying the factors enumerated above to the particular allegations that constitute the violations charged in this action. The reasoning for the specific penalty assessed for each count is set forth in the "Region 5 UIC Penalty Policy" (September 21, 1994), with the 10 percent DCIA adjustment applied to the civil penalty proposed for violations occurring after January 30, 1997 and the additional 17.23 adjustment applied to the civil penalty for violations occurring after March 15, 2004.

Respondent may pay this penalty by certified or cashier's check, payable to "Treasurer, the United States of America," and remit to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

John Tielsch
Associate Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

William J. Bates
Underground Injection Control Branch
Water Division
U.S. EPA, Region 5 (WU-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

III. PROPOSED COMPLIANCE ORDER

Based on the violations alleged in the Administrative Complaint, and pursuant to the authority of Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), Complainant proposes that Respondent be issued a Compliance Order requiring Respondent to take all actions reasonable and necessary to assure full compliance with the Permit and any and all applicable UIC regulations, including, but not limited to, the Permit conditions and regulations that are the subject of this action.

IV. OPPORTUNITY TO REQUEST A HEARING

As provided in Section 1423(c)(3)(A), of SDWA, 42 U.S.C. § 300h-2(c)(3)(A), you have the right to request a hearing on the allegations of the Complaint, the appropriateness of the civil penalty proposed to be assessed for the violations and/or the appropriateness of the compliance

order proposed to be issued for the violations. Any hearing that you request will be held and conducted in accordance with the provisions of the proposed Consolidated Rules, 40 C.F.R. Part 22, Subpart I. A copy of the proposed Consolidated Rules is included with this Complaint.

If you wish to avoid being found in default, you must file a written Answer within 30 days of service of this Complaint with the Regional Hearing Clerk, whose address is:

Regional Hearing Clerk
U.S. EPA, Region 5 (E-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. Pursuant to 40 C.F.R. § 22.15(b), the Answer must also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you intend to place at issue; and
3. Whether you request a hearing.

Pursuant to 40 C.F.R. § 22.15(d), the failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

A copy of this Answer and any subsequent documents filed in this action should also be sent to:

John Tielsch
Associate Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Tielsch's telephone number is (312) 353-7447.

If you fail to file a written Answer, with or without a Request for Hearing, within 30 days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a

Default Order. Issuance of a Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing under SDWA. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings 60 days after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17(a).

In addition, failure to timely pay the assessed penalty may result in a collection action brought pursuant to Section 1423(c)(7) of SDWA, 42 U.S.C. § 300h-2(c)(7), to recover the assessed penalty plus the costs, attorneys' fees, and interest (at currently prevailing rates) that accrues from the date the order is effective. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

V. SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to the attorney whose name and address appear in Section IV above (Opportunity To Request A Hearing).

Your request for an informal settlement conference does not extend the 30 day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written "Consent Agreement and Final Order" ("CAFO") issued by the Regional Administrator.

The issuance of a CAFO shall constitute a waiver of your right to request a hearing on any matter stipulated in the CAFO.

Jo Lynn Traub
For

Dated:

September 25, 2006

Jo Lynn Traub
Director, Water Division
U.S. EPA, Region 5 (W-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

SDWA-05-2006-0005



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF
WU-16J

AUG 14 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Confidential
For Settlement Purposes Only

Byron F. Taylor
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

Re: *In re Mosaic USA, LLC*, No. SDWA-05-2006-0005

Dear Mr. Taylor:

Enclosed are two copies of a Consent Agreement and Final Order (CAFO) for the above-referenced matter. When signed by both Mosaic USA, LLC, and the Director of the Water Division, United States Environmental Protection Agency (U.S. EPA) Region 5, U.S. EPA will sign the final order of the CAFO and it will be filed with the Regional Hearing Clerk. Mosaic USA, LLC will be required to pay a \$50,000.0 penalty within 60 days after filing with the Regional Hearing Clerk.

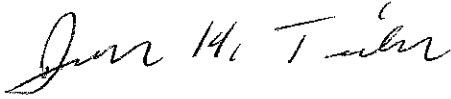
Please review these documents, and if the terms are acceptable to your client, please have an authorized representative of Mosaic USA, LLC, sign the two copies and return them to me.

Please note that Section 1423(c)(3)(B) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. § 22.45(b) require U.S. EPA to provide public notice of, and reasonable opportunity to comment on, a complaint and proposed order issued pursuant to the SDWA. U.S. EPA did not receive any comments prior to the deadline in the notice. One of the CAFOs will be filed with the Regional Hearing Clerk. The other signed CAFO will be sent to you with a cover letter that explains when and how the penalty must be submitted to fulfill the requirements of the CAFO and conclude this matter.

Note that any settlement is subject to final approval of Region 5 management.

Thank you for your continued cooperation in this matter. Please do not hesitate to call me at (312) 353-7447 if you have any questions regarding the CAFO as drafted.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "John H. Tielsch".

John H. Tielsch
Associate Regional Counsel

Enclosures:

cc: Harvey/Perenchio
B. Bates
J. Tielsch(ORC)
Well file

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Mosaic USA, LLC, d/b/a
Mosaic Potash Hersey, LLC
Hersey, Michigan**

Respondent.

)
)
) **Docket No. SDWA-05-2006-0005**
)
)
)
)

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director, Water Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brought this administrative action seeking a civil penalty pursuant to Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2c and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (Consolidated Rules), as codified at 40 C.F.R. Part 22. In particular, this proceeding was conducted in accordance with the procedures set forth in Subpart I of the Consolidated Rules which apply to actions, such as this one, that are not governed by Section 554 of the Administrative Procedures Act, 5 U.S.C. §554..

2. On September 26, 2006, Complainant filed the complaint in this action against Respondent, Mosaic USA LLC, a limited liability company organized under the laws of Delaware authorized to do business in the State of Michigan under the name Mosaic Potash Hersey, LLC. The complaint alleges that Respondent owned or operated in Osceola County, Michigan, eighteen Class III underground salt water injection wells, as defined by 40 C.F.R. §§

144.3, 144.6(c), 146.3 and 146.5(c). The complaint alleges that Mosaic violated 40 C.F.R. §144.51(a) by failing to perform Part II of the mechanical integrity demonstration on these wells in accordance with the Underground Injection Control Permits that U.S. EPA issued for the wells or by failing to meet the requirements of 40 C.F.R. §144.51(a).

3. On November 1, 2006, Respondent filed an answer to the complaint and requested a hearing.

Stipulations

4. Respondent admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

5. Respondent waives its right to contest the allegations in the complaint, and waives its rights under any provision of law to a hearing on this matter and to appeal or challenge the terms and conditions of this Consent Agreement and Final Order.

6. Respondent certifies that the wells listed in the complaint are in compliance with all applicable requirements of the SDWA, its permits and 40 C.F.R. Parts 144 and 146.

7. The parties consent to the terms of this Consent Agreement and Final Order (CAFO) and agree that settling this action without further litigation is in the public interest.

Civil Penalty

8. In consideration of the foregoing certifications, stipulations and agreements, and in conformance with Section 143(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), U.S. EPA agrees to mitigate the proposed penalty of \$157,500 to \$50,000.

9. Respondent must pay the \$50,000 civil penalty by Electronic Funds Transfer (EFT), payable to the "Treasurer, United States of America" within 30 days after the effective date of

this CAFO.

10. Respondent must remit the penalty to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 6801727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is: "D 68010727
Environmental Protection Agency"

11. Payment shall be accompanied by a statement identifying the Respondent's name and address and the case name and docket number. Respondent must send copies of the transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA - Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

UIC Branch (WU-16J)
U.S. EPA - Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

John H. Tielsch (C-14J)
Office of Regional Counsel
U.S. EPA - Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

12. This civil penalty is not deductible for federal tax purposes.

13. If Respondent does not timely pay the civil penalty, U.S. EPA may refer this matter to the U.S. Department of Justice for collection. The validity, amount and appropriateness of the penalty is not subject to review in a collection proceeding.

14. Pursuant to 31 U.S.C. § 3717 and 31 C.F.R. § 5.5, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b)

General Provisions

15. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint, and does not constitute a waiver by U.S. EPA of its remedies, either judicial or administrative, under SDWA and other applicable laws and regulations.

16. This CAFO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state and local laws and regulations.

17. The terms of this CAFO bind Respondent, its successors and assigns.

18. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

19. Each party agrees to bear its own costs and fees in this action.

20. This CAFO constitutes the entire agreement between the parties.

21. Respondent consents to the issuance of the accompanying Final Order without

further notice.

22. After executing this CAFO, Respondent consents to the filing of this fully executed CAFO with the Regional Hearing Clerk without further notice to Respondent. Complainant agrees to deliver to Respondent expeditiously a copy of the fully executed and file-stamped CAFO after filing it with the Regional Hearing Clerk.

Effective Date

23. For purposes of Section 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), this CAFO shall be considered issued upon filing with the Regional Hearing Clerk.

24. Pursuant to Section 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), this CAFO will become effective 30 days after issuance, which is 30 days after the filing of this CAFO with the Regional Hearing Clerk.

Mosaic USA, LLC, Respondent

Date: _____

By: _____

**United States Environmental Protection Agency,
Complainant**

Date: _____

By: _____

Cheryl Newton
Acting Director, Water Division
U.S. Environmental Protection Agency-Region 5

IN THE MATTER OF:

Mosaic USA, LLC, d/b/a
Mosaic Potash Hersey, LLC
Hersey, Michigan

)
)
)
) Docket No. SDWA-05-2006-0005
)

Final Order

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The settling Respondent, Mosaic USA LLC, is hereby **ORDERED** to comply with all terms of the Consent Agreement, which shall be effective 30 days after the filing of the Consent Agreement and Final Order with the Regional Hearing Clerk.

Date: _____

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency-Region 5